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C O N F I D E N T I A L SECTION 01 OF 02 KUWAIT 000198

SIPDIS

STATE FOR S/WCI, NEA/NGA, NEA/ARP

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SUBJECT: (C) S/WCI AMB. PROSPER DISCUSSES IRAQI SPECIAL TRIBUNAL WITH GOK

Classified By: CDA FRANK URBANCIC; REASON: 1.4 (B, D)

1. (C) SUMMARY: The GOK pressed for special attention to be given to prosecuting crimes of the Saddam Hussein regime committed against Kuwaitis. At S/WCI Amb. Prosper's suggestion, the GOK agreed to work on putting together a team of investigators to assist the Iraqi Special Tribunal in its investigation of crimes committed against Kuwaitis, subject to Iraqi approval. Amb. Prosper promised to explore placing a Kuwaiti legal expert within CPA to facilitate cooperation and support for the process. He invited Kuwait to consider helping to fund a storage facility in Baghdad for documents of the deposed Iraqi regime. Regarding the twelve Kuwaiti Guantanamo detainees, he urged the GOK to discuss informally what measures it would be prepared to take case-by-case, as soon as its delegation returns from visiting Guantanamo. END SUMMARY.

2. (SBU) S/WCI Amb. Pierre Prosper, accompanied by Jonathan Crock of S/WCI and Pol Chief, met January 18 with MFA Director of Follow-Up and Coordination Amb. Khaled Maghamis, Deputy Attorney General Sultan Bou Jarwa and Kuwait University law professor Dr. Mohammed Buzubar (all three are members of the GOK's committee dealing with Iraqi war crimes, which Bou Jarwa chairs).

(C) IRAQI SPECIAL TRIBUNAL

3. (C) The Kuwaitis were familiar with the Statute of the Iraqi Special Tribunal (IST), and were keen to discuss how the GOK can participate to the fullest in bringing Iraqi war criminals to justice. Amb. Prosper informed them he had just come from lengthy discussions in Baghdad with the Iraqi Governing Council (IGC) and Coalition Provisional Authority (CPA), which have set up a joint team with him to discuss the workings of the IST and foreign involvement. The IGC point of contact is Salem Chalabi (Ahmed's nephew). Working with CPA, Prosper hoped to have submitted to the IGC within a week a list of countries that he would be prepared to approach on their behalf to seek support for the IST, and Kuwait would be on the list. He would seek IGC's official acceptance of this list, which he hoped would include as many Arab countries as possible. Meanwhile, he assured the Kuwaitis, the IGC agreed the Saddam regime's crimes against Kuwait needed to be prosecuted, and that preliminary indications are that it was willing to receive help from Kuwait, including personnel to assist with investigations and provide expert advice. He suggested that the GOK put together a team of five to ten investigators that would focus (not necessarily exclusively) on crimes against Kuwaitis. The team should be prepared to visit Baghdad to discuss with Salem Chalabi and CPA what types of assistance Kuwait can provide, just as soon as IGC approves the list of countries.

4. (C) Bou Jarwa made clear that Kuwait prefers to have key advisor positions in the IST filled by non-Iraqis, and that it hopes there will be a court chamber reserved for crimes against Kuwait. The GOK would like to place advisors as close as possible to court presidents, because the Statute grants them the power to make and amend rules of procedure. He said his government has spent years documenting the Saddam regime's crimes against Kuwait, and is "90 percent" ready to present evidence to the IST. He sought confirmation that non-Iraqis could provide evidence. Amb. Prosper assured him they could, citing Article 7(i) and Article 18 of the Statute: the investigating judge can receive information from any source.

5. (C) Bou Jarwa also wanted to know if Kuwait could help shape the IST judges' thinking on rules of procedure. Amb. Prosper explained that the IGC is drafting a proposed set of procedures. Bou Jarwa stressed that it was vital to ensure the admissibility of any evidence Kuwait provides. His greatest fear was that a judge would accept it, then summarily dismiss it. As Maghamis remarked: "it would be 13 years of work for nothing." Amb. Prosper took the point, assuring his hosts that the early draft is very similar to the procedures used at the International Criminal Tribunal for the former Yugoslavia, which allow all evidence as long as it is probative.

6. (C) Bou Jarwa's other main fear was that the crimes

against Kuwait constituted such a small part of the total committed by the Saddam regime that they could get lost in the mix. Amb. Prosper said he would recommend that one of the investigating judges be dedicated to crimes against Kuwait. He also promised to explore urgently the possibility of a Kuwaiti legal expert joining CPA. He emphasized that this person would need to have fluent English, strong inter-personal skills and a good grasp of practical realities, in addition to legal expertise. Bou Jarwa replied: "we are awaiting your okay to proceed with the five-plus-one team" (i.e. five investigators and one expert seconded to CPA).

17. (C) Bou Jarwa said the GOK would like to have access to the documents of the Saddam regime that are now in coalition hands. They may contain information pertinent to prosecuting ex-Iraqi regime figures for crimes against Kuwait, and they may shed light on the fate of some of the 605 Kuwaiti missing persons from the Iraqi occupation. (Note: about 60 bodies have been recovered and positively identified since the overthrow of the Saddam regime, thanks to the strong cooperation of the CPA and Coalition forces. End Note.) Amb. Prosper took the point and said he was working to arrange the transfer of these documents -- some of which were being reviewed for security purposes by another part of the USG -- to CPA. He would also seek urgent funding to establish secure storage where IST investigators could search them. He invited the GOK to consider helping to fund this storage project, and noted that seconding a Kuwaiti expert to CPA would enable Kuwaiti access to these documents. He stressed that it would take at least another month to complete this transfer, for which he did not yet have final agreement on protocol within the USG. He assured Bou Jarwa that everyone understands the need to make these documents available before IST trials are held.

18. (C) Buzubar asked whether declaring Saddam a POW meant that he would be tried before an international tribunal. Prosper explained that the decision to declare Saddam a POW was made on narrow legal grounds, because the war to liberate Iraq was fought under the Geneva Conventions and he was the commander in chief of enemy forces. That status, he added, is not relevant to the periods before and after the major combat operations. Indeed, President Bush has stated that Saddam will be tried by the IST; the expectation is that once a sovereign Iraqi government is in place, he could be transferred to its custody.

19. (C) In closing this portion of the meeting, Maghamis said the GOK war crimes committee would meet on January 20 and seek to move quickly on the points just discussed. Bou Jarwa and Buzubar then departed the meeting.

(U) GUANTANAMO

10. (C) Neither side had heard any feedback about the ongoing visit of a GOK delegation to Guantanamo. Amb. Prosper stressed that President Bush wants to move quickly on disposition of the Guantanamo detainees case-by-case, either by prosecuting them, releasing them, or transferring them to their home countries for investigation/prosecution or monitoring. He urged Maghamis to be in touch with him or the Embassy as soon as possible after the return of the delegation, to indicate informally what the GOK would be prepared to do in the case of each of the twelve Kuwaiti detainees: e.g. travel restrictions, surveillance, detention, prosecution. Maghamis replied that there was no problem with imposing travel bans, withholding passports, requiring individuals to report frequently to the Police, and other forms of monitoring; on the other hand, prosecution would be difficult, at least in some cases. Amb. Prosper repeated his suggestion of informal contact as soon as possible, ahead of any formal negotiating. Maghamis emphasized his desire for quiet diplomacy away from the media. He was under intense pressure from the National Assembly and the families of the detainees, but he was sure the issue could be worked out between two such friendly countries.

11. (C) COMMENT: Amb. Prosper's substantive engagement with the GOK is very timely and lays the groundwork for integrating Kuwait into the IST process firmly and quickly. This will go far towards helping the GOK demonstrate to its people that its cooperation with us is preserving its equities in this most politically sensitive area.

12. (U) Amb. Prosper has cleared this message.

13. (U) Baghdad minimize considered.
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